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### ETHICS ADVISORY OPINION NO. 23-003-E

February 3, 2023

**Question Presented:** May the minor child of a state agency director be temporarily employed by a business which is a contractor to the agency?

**Brief Answer:** Yes, but the agency director must fully recuse from any action which would result in a monetary benefit to the business, as required by Section 25-4-105(1), Miss. Code of 1972.

The Mississippi Ethics Commission issued this opinion on the date shown above in accordance with Section 25-4-17(i), Mississippi Code of 1972, as reflected upon its minutes of even date. The Commission is empowered to interpret and opine only upon Article IV, Section 109, Mississippi Constitution of 1890, and Article 3, Chapter 4, Title 25, Mississippi Code of 1972. This opinion does not interpret or offer protection from liability for any other laws, rules or regulations. The Commission based this opinion solely on the facts and circumstances provided by the requestor as restated herein. The protection from liability provided under Section 25-4-17(i) is limited to the individual who requested this opinion and to the accuracy and completeness of these facts.

#### I. LAW

The pertinent Ethics in Government Laws to be considered here are as follows:

Section 25-4-103, Miss. Code of 1972.

(c) "Business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, holding company, self-employed individual, joint stock company, receivership, trust or other legal entity or undertaking organized for economic gain, a nonprofit corporation or other such entity, association or organization receiving public funds.

(d) “Business with which he is associated” means any business of which a public servant or his relative is an officer, director, owner, partner, employee or is a holder of more than ten percent (10%) of the fair market value or from which he or his relative derives more than Two Thousand Five Hundred Dollars (\$2,500.00) in annual income or over which such public servant or his relative exercises control.

(i) “Income” means money or thing of value received, or to be received, from any source derived, including but not limited to, any salary, wage, advance, payment, dividend, interest, rent, forgiveness of debt, fee, royalty, commission or any combination thereof.

(l) “Pecuniary benefit” means benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain. Expenses associated with social occasions afforded public servants shall not be deemed a pecuniary benefit.

(p) “Public servant” means:

(i) Any elected or appointed official of the government;

(ii) Any officer, director, commissioner, supervisor, chief, head, agent or employee of the government or any agency thereof, or of any public entity created by or under the laws of the state of Mississippi or created by an agency or governmental entity thereof, any of which is funded by public funds or which expends, authorizes or recommends the use of public funds; or

(iii) Any individual who receives a salary, per diem or expenses paid in whole or in part out of funds authorized to be expended by the government.

(q) “Relative” means:

(i) The spouse of the public servant;

(ii) The child of the public servant;

(iii) The parent of the public servant;

(iv) The sibling of the public servant; and

(v) The spouse of any of the relatives of the public servant specified in subparagraphs (ii) through (iv).

Section 25-4-105, Miss. Code of 1972.

(1) No public servant shall use his official position to obtain, or attempt to obtain, pecuniary benefit for himself other than that compensation provided for by law, or

to obtain, or attempt to obtain, pecuniary benefit for any relative or any business with which he is associated.

## II. FACTS

Facts provided by the requestor are set forth below, with identifying information redacted, and are considered a part of this opinion.

I have been Executive Director of [a State Agency] since October 2020. [I have been employed by the agency in a number of different capacities since 2007, prior to which time I worked in the private sector.] It may be relevant that [a certain individual] and I have known each other since before 2007 - i.e. before I was employed at [the State Agency].

For a number of years ... [the business owned by this individual] has been one of [the State Agency]'s several ... contractors [for a type of service]. Toward the end of 2020, [the State Agency] conducted a competitive procurement for ... Contractors [for this service]. The solicitation was conducted, in accordance with State procurement law, as an Invitation for Bids, and the solicitation was conducted such that the agency's intent was to enter into contracts with all bidders that met the minimum qualifications under the solicitation. It is my understanding that [this business] was the only firm to submit a bid. In early 2021, [the State Agency] entered into a contract with [the business]. I do not assign work to [the business] under the contract, nor do I approve their invoices.

I have a 17-year-old son [...] who is looking for summer work and is interested in working for [the business]. The question is whether state law would allow him to do so given my position as Executive Director of [this State Agency].

## III. ANALYSIS

Every public servant of state and local government is prohibited from using his or her position to obtain or attempt to obtain a monetary benefit for any "business with which he [or she] is associated, as set forth in Section 25-4-105(1), Miss. Code of 1972. A business which employs the public servant's child is a business with which the public servant is associated, as defined in Section 25-4-103(d).

Therefore, if the contractor to the agency employs the son of the executive director, then it will be a business with which the executive director is associated, and he or she will be prohibited from taking any action which will result in a pecuniary benefit to the business, such as approving work orders or payments. The executive director reports that he or she takes no such actions with regard to the contractor. Nevertheless, if any such action comes before the executive director, he or she must fully recuse from that action.

A total and complete recusal requires that the executive director avoid discussing or taking action on the subject matter during official meetings and avoid discussing the subject matter with

other state agency employees. This restriction includes casual comments, as well as detailed discussions, made in person, by telephone or by any other means.

MISSISSIPPI ETHICS COMMISSION

BY:

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Tom Hood, Executive Director and  
Chief Counsel